ARIZONA SUPREME COURT

CENTER FOR ARIZONA POLICY, INC., an Arizona nonprofit corporation; ARIZONA FREE ENTERPRISE CLUB; DOE I; DOE II,

Plaintiffs-Appellants,

v.

ARIZONA SECRETARY OF STATE; ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION,

Defendants-Appellees,

and

ARIZONA ATTORNEY GENERAL; VOTERS' RIGHT TO KNOW,

Intervenor-Defendants-Appellees.

Arizona Supreme Court
Case No. CV-24-0295-PR

Arizona Court of Appeals
Case No. 1 CA-CV 24-0272

Maricopa County Superior Court
Case No. CV2022-016564

BRIEF OF AMICI CURIAE AMERICANS FOR PROSPERITY AND AMERICANS FOR PROSPERITY FOUNDATION IN SUPPORT OF APPELLANTS

(Filed pursuant to ARCAP 16(b)(1)(A) with the written consent of the parties)

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INTRODUCTION

Plaintiffs-Appellants well explain how Proposition 211 imperils the freedom of speech and right to privacy protected by Arizona's Constitution. As their Supplemental Brief explains, the Speak Freely Clause "protects speech and association more than the First Amendment does," CAP Supp. Br. 1 (citing *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 281-82 ¶45 (2019)), and Proposition 211 is unnecessary to "prevent[] or penalize[] an 'abuse'" of those rights, *see id.* at 5-6. Under "the most stringent and precise" standard—strict scrutiny—Proposition 211 violates the Arizona Constitution. *See id.*

Amici herein respectfully submit that Proposition 211 also fails the exacting scrutiny required by the U.S. Constitution, as *amici* are contending in a federal-court challenge to the law currently before the Ninth Circuit. The law's sweeping and intrusive disclosure mandates—imposed in overbroad pursuit of the "original source" of so-called "campaign media spending"—are anathema to all Americans' freedom to associate privately under the First Amendment. With its radical breadth, Proposition 211 contravenes recent Supreme Court precedents, particularly *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021), that reaffirm constitutional protections for donor anonymity. The law aims to upend the established rule against compelled disclosure by expanding the campaign-finance "exception" so broadly that it swallows the protective rule.

The whole of Proposition 211's constitutional transgressions surpasses the sum of each problematic part. The law's far-reaching provisions compound the chills and burdens upon core First Amendment rights—cueing off a wide range of traditional issue advocacy so as to demand burdensome, never-ending "look through" disclosures that radiate across donor chains nationwide, while inviting maximally aggressive enforcement by private litigants. By no means can such sweeping provisions withstand the exacting scrutiny applicable to any law compelling disclosure. Proposition 211 is not substantially related to any cognizable government interest, and its burdens are disproportionate to any nebulous interest purportedly served. Moreover, Proposition 211's sweeping, unexamined application belies any claim of narrow tailoring.

"[S]tate courts have the solemn responsibility equally with the federal courts to safeguard [federal] constitutional rights." *Burt v. Titlow*, 571 U.S. 12, 19 (2013) (quotation omitted). This Court should not countenance Proposition 211's trampling of cherished constitutional protections.

STATEMENT OF INTEREST OF AMICI

Americans for Prosperity ("AFP") is a nonprofit corporation headquartered in Virginia that operates nationwide and has a chapter in Phoenix. AFP engages in grassroots outreach to advocate for solutions to the country's biggest problems, such as unsustainable government spending and debt, a broken immigration system, a

rigged economy, and a host of other issues. AFP funds its activities by raising general charitable donations from donors throughout the country, including in Arizona.

Americans for Prosperity Foundation ("AFPF") is a nonprofit corporation headquartered in Virginia. For over 20 years, AFPF has been educating and training citizens to advocate for freedom, sharing knowledge and tools that encourage participants to apply the principles of a free and open society in their daily lives. AFPF funds its activities by raising general charitable donations from donors nationwide, and has taken public positions on hot-button issues that affect individuals across the political spectrum, such as education, immigration, and criminal justice reform.

In 2023, AFP and AFPF filed suit in federal court challenging Proposition 211 under the First Amendment to the U.S. Constitution. *See Ams. for Prosperity v. Meyer*, No. 2:23-cv-470 (D. Ariz.). In April 2024, the district court dismissed the suit and entered judgment. The case is currently pending before a panel of the U.S. Court of Appeals for the Ninth Circuit, which heard oral argument on May 15, 2025. *See Ams. for Prosperity v. Meyer*, No. 24-2933 (9th Cir.).

ARGUMENT

The First Amendment safeguards Americans' right to donate to charitable and advocacy organizations without undue risk of disclosure or other chilling by the

government. *See Bonta*, 594 U.S. at 609-12. "The 'government may regulate in the [First Amendment] area only with narrow specificity,' and compelled disclosure regimes are no exception." *Id.* at 610 (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963)). "When it comes to 'a person's beliefs and associations,' '[b]road and sweeping state inquiries into these protected areas . . . discourage citizens from exercising rights protected by the Constitution.'" *Id.* (quoting *Baird v. State Bar of Ariz.*, 401 U.S. 1, 6 (1971) (plurality opinion)).

Therefore, "[r]egardless of the type of association, compelled disclosure requirements [must be] reviewed under exacting scrutiny." *Id.* at 608 (plurality opinion). "Under that standard, there must be 'a substantial relation between the disclosure requirement and a sufficiently important governmental interest,'" "the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights," and the disclosure requirement must "be narrowly tailored to the government's asserted interest." *Id.* at 607-08 (quotations omitted). Proposition 211's defenders bear the burden of satisfying exacting scrutiny. *See id.* at 608-10.

A. Proposition 211 Is Not Substantially Related To A Sufficiently Important Government Interest.

In *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam), the U.S. Supreme Court acknowledged only a few interests of sufficient "magnitude" to justify compelled disclosure. *Id.* at 66. The defenders of Proposition 211 and the court of appeals

point to two: informing voters and combating corruption. *See* VRTK Supp. Br. 2-6; State Supp. Br. 12-17; Op. ¶¶23-28. But neither suffices to justify the law.

Informational interest. As articulated by the Supreme Court, the State's interest in compelling disclosures for the purpose of informing voters is carefully circumscribed. The State has no generalized interest in providing any potentially "relevant information." *See McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 348 (1995). Rather, the information must specifically "aid the voters in evaluating those who seek [political] office" and monitoring their performance while in office. *See Buckley*, 424 U.S. at 66-67.

Proposition 211's required disclosures are untethered from the context of electioneering or direct influence on lawmakers, in which prior disclosure mandates designed to inform the public have been upheld. Its broad triggers sweep in advocacy far removed from any election. *See infra* pp.12-14. The law also contains an endless look-through provision that requires covered persons to disclose the "original source" or "intermediary" of at least $5,000 in funds potentially spent on campaign media spending, regardless of whether those "original sources" or "intermediaries" had any intent or even knowledge about how their donations were ultimately used. *See* A.R.S. § 16-973(A)(6)-(7). That is, the law reaches all of those who gave anywhere upstream, so long as their funds somehow found their way to a

person regulated by Proposition 211. For three reasons, Proposition 211 stretches the informational interest from *Buckley* past its First Amendment breaking point.

First, Proposition 211 contains no earmarking or knowledge requirement. Instead, it relies on the assumption that if A gives to B, and B gives to C, and C gives to D, and D finally engages in electioneering, then A is somehow the "true source" that should be disclosed. *See* Op. ¶33. In *McCutcheon v. FEC*, 572 U.S. 185 (2014), however, the Supreme Court rejected this reasoning as "divorced from reality," particularly insomuch as it was intended to target circumvention that is already prohibited. *See id.* at 215-16 (plurality opinion). As both federal and Arizona state law bar contributions made to circumvent disclosure laws, *see* 52 U.S.C. § 30122; A.R.S. § 16-1022(B), *McCutcheon* precludes any informational interest in parsing chains of non-earmarked donations to discover the "true," though unwitting, sources of electioneering.

Notably, no federal law contains the look-through provision so central to Proposition 211's "unique" framework. Indeed, the U.S. Supreme Court has blessed federal laws with earmarking or similar requirements tethering disclosures to clear electoral activity. For example, in *McConnell* and *Citizens United*, the Court upheld provisions of the Bipartisan Campaign Reform Act of 2002 ("BCRA"). *See McConnell v. FEC*, 540 U.S. 93, 194-202 (2003); *Citizens United v. FEC*, 558 U.S. 310, 366-71 (2010). And BCRA largely requires the disclosure of either segregated

accounts consisting "solely" of funds given "directly to th[e] account for electioneering communications," 52 U.S.C. § 30104(f)(2)(E), or contributions "made for the purpose of furthering" electioneering communications per federal regulation, Electioneering Communications, 72 Fed. Reg. 72899, 72910-11 (Dec. 26, 2007) (interpreting 52 U.S.C. § 30104(f)(2)(F)). The very definition of "contribution" in federal law includes an element of intent. *See* 52 U.S.C. § 30101(8)(A)(i). Federal appellate courts have similarly emphasized the importance of limiting disclosure to contributions specifically earmarked for electoral advocacy. *See, e.g.*, *Wyo. Gun Owners v. Gray*, 83 F.4th 1224, 1247-48 (10th Cir. 2023); *Van Hollen, Jr. v. FEC*, 811 F.3d 486, 501 (D.C. Cir. 2016).

Second and related, Proposition 211 ties "original donors" with downstream positions, organizations, and candidates, regardless of whether the "original donor" supports them or even knows they exist. Far from helping voters evaluate candidates or ballot measures, *see Buckley*, 424 U.S. at 66-67, such attenuated information stands to confuse, mislead, or overwhelm voters.

For example, consider two out-of-state institutions—a church and a synagogue—that gather donations from congregants that exceed $5,000. The church later gives more than $5,000 to the NAACP and the synagogue contributes a similar amount to the ADL. If the NAACP or ADL later engage in advocacy that triggers Proposition 211, members of the church or synagogue will be disclosed as the

"original sources" of that spending without their intent, knowledge, or slightest connection to Arizona. Such disclosures cannot possibly "alert the voter to the interests to which a candidate is most likely to be responsive" or "facilitate predictions of future performance in office." *Id.* at 67. Put simply, the State has *no* interest—let alone a "sufficiently important" one, *Bonta*, 594 U.S. at 618—in "hold[ing] [individuals] accountable" for the "positions" of organizations they never intended to support, *cf. Citizens United*, 558 U.S. at 370.

Finally, the asserted interest in knowing the "true source" of independent campaign spending regardless of knowledge or intent transgresses the constitutional line. The bare fact of "where the money came from," without more, falls outside any informational interest endorsed by precedent. The State's position would permit the government to collect any information no matter how marginally "relevant." *McIntyre*, 514 U.S. at 348. Arizona could just as easily require speakers to supply information ranging from bank statements to inheritance receipts, 1099-MISCs to winning lottery tickets, on the basis that those constitute the "true sources." There would be no ostensible reason why Proposition 211's disclosures exclude business customers and commercial counterparties, whose payments could be framed as "where the money comes from." Such an interest thus turns First Amendment doctrine on its head and invites compelled, invasive disclosure to become the rule.

Anti-corruption interest. Nor does the anti-corruption interest justify Proposition 211. In *Buckley*, the U.S. Supreme Court held that disclosures can "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity." 424 U.S. at 67. But Proposition 211 does not further this interest. To begin, in *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), the Supreme Court made clear that "[t]he risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue." *Id.* at 790 (citation omitted). Thus, no anti-corruption interest can be served by Proposition 211's disclosures tied to ballot measures. *See* A.R.S. § 16-971(2)(a)(iv).

And in *Citizens United*, the Supreme Court held that independent expenditures, like those regulated by Proposition 211, "do not lead to, or create the appearance of, *quid pro quo* corruption." 558 U.S. at 360; *see also id.* (noting that "there is only scant evidence that independent expenditures even ingratiate," and "[i]ngratiation and access, in any event, are not corruption"). *Citizens United* thus removes the anti-corruption interest as a support for Proposition 211.[1] Notably, Proposition 211 does not apply to money given directly to candidates. By contrast,

[1] To the extent the court of appeals relied on an alleged connection between independent expenditures and corruption, *see* Op. ¶32, it was out of step with the U.S. Supreme Court's decision in *Citizens United*.

requiring disclosures and disclaimers of unwitting, uninvolved donors does not meaningfully curb any of the supposed evils attributed to political spending.

B. Proposition 211 Imposes Onerous Burdens.

Under exacting scrutiny, the government's interest in compelled disclosure must reflect "the seriousness of the actual burden" on First Amendment rights. *Bonta*, 594 U.S. at 615 (quotation omitted). Disclosure itself imposes a "not insignificant burden[] on individual rights." *Buckley*, 424 U.S. at 68. Proposition 211 additionally encumbers First Amendment rights through its unusual opt-out provision, substantial recordkeeping requirement, overbroad triggers, and private-enforcement mechanism. Taken together, the law's daunting burdens vastly exceed any qualifying state interest that may arguably apply.

Opt-out provision. Proposition 211 requires covered persons to notify *all* direct donors, regardless of how much they give (and whether it would trigger disclosure), of "an opportunity to opt out of having [their] donation used or transferred for campaign media spending." A.R.S. § 16-972(B). "The notice required … may be provided to the donor before or after the covered person receives a donor's monies," but it halts use of the funds for up to 21 days post-notice or until the donor consents to their use in campaign media spending. *Id.* § 16-972(C). Notably, the opt-out procedure does not apply to upstream donors, and it expressly warns all direct donors that they are at risk of being disclosed unless they opt out

(thus misleading and chilling vast numbers of donors whose donation levels would not trigger disclosure in any event). *Id.* § 16-972(B).

The opt-out provision imposes a daunting burden on covered persons, which must convey and administer the opt-outs across their entire donor base. Moreover, by requiring up to 21 days' notice, Proposition 211 puts the right to speak—including on time-sensitive issues—at the mercy of third parties (even if they do not meet the thresholds for disclosure). That is a stifling burden on speech—particularly in the context of political issues, where "timing is of the essence" and "it is often necessary to have one's voice heard promptly, if it is to be considered at all." *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 163 (1969) (Harlan, J., concurring).

More fundamentally, the opt-out provision subverts the protections of the First Amendment. The theory of the opt-out provision is that donors can avoid burdens upon their associational rights by opting out of exercising those rights. In practice, however, the law actively pressures donors to opt out, lest they suffer damaging disclosure. Indeed, by suggesting to donors who give below the statutory thresholds that they too face risks of being disclosed, Proposition 211 creates gratuitous, additional chill and disincentivizes donors from participating in the public square.

Finally, the opt-out provision creates additional burdens as it applies to national organizations that raise money from across the country to spend in many states, including Arizona. To comply with Proposition 211, those organizations must

either transform their entire fundraising apparatus (giving notice of the opt-out to every donor nationwide), or only use those funds that have been requested in specific compliance with the Arizona law. Either way, the opt-out creates an administrative nightmare for all speakers who may fall prey to Proposition 211.

Recordkeeping requirements. Proposition 211 requires that covered persons retain contribution records for five years, *see* A.R.S. § 16-972(A), longer than the three years mandated by federal law, *see* 52 U.S.C. § 30102(d). Those records are not just of the covered person's donors, but of every "intermediary" up through the so-called "original source" who donated more than $2,500. *See* A.R.S. §§ 16-971(19), 16-972(A). The retention of such vast and complex records, which must be provided on request to the state elections commission, *id.* § 16-972(A), imposes still greater administrative burdens. And it imperils the privacy of donors who have no control or knowledge over the ultimate use of their funds, nor any control over disclosure of their personal information.

Overbroad triggers. A strikingly broad definition of "campaign media spending" determines whether a given activity triggers Proposition 211's burdens. To begin, Proposition 211 sweeps in mere references to "clearly identified" political candidates from May to November of every even year (90 days before the primary up through the general election), across all media, far exceeding the parallel timeframe and scope in federal law. *Compare id.* § 16-971(2)(a)(iii), *with* 52 U.S.C.

§ 30104(f)(3)(A)(i)(II) (30 days before a primary or 60 days before a general election and confined to TV, radio, and satellite communications). This trigger regulates issue advocacy throughout critical periods when the Arizona legislature is in session and equates any reference to any officeholder to electioneering.[2]

Next, Proposition 211 triggers disclosure when a communication "promotes, supports, attacks, or opposes" a candidate within "six months preceding an election involving that candidate." A.R.S. § 16-971(2)(a)(ii). That is nearly the entire calendar year in even-numbered years (late January or early February onwards), including most of the legislative session. And the chill emanating from such a lengthy window is only exacerbated by the murky scope of the "PASO" trigger.

Proposition 211 also requires disclosure if a communication "promotes, supports, attacks or opposes" an initiative or referendum at any time. *Id.* § 16-971(2)(a)(iv). Arizonans regularly vote on hot-button ballot measures like abortion or the minimum wage.[3] And local jurisdictions often hold off-cycle votes on tax-related issues.[4] Under Proposition 211, charitable organizations that engage in public education or advocacy year-round on such issues will be subject to the law's

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[2] *See 2024 Legislative Session Dates: Arizona*, MultiState (Dec. 31, 2024), https://tinyurl.com/shdsyhfn (2024 session went from January 8 to June 15).

[3] *See Ballot Measures 2024 Analyses*, Arizona Legislature, https://tinyurl.com/dndsh8sa (last accessed June 23, 2025).

[4] *See, e.g., 2025 Bond And Override Elections*, Maricopa County School Superintendent, https://tinyurl.com/bfjru37ha (last accessed June 23, 2025).

burdens—perhaps unknowingly—so long as a measure concerning their area of concern happens to appear on the ballot.

Additionally, Proposition 211 triggers coverage whenever a communication advocates for or against a recall. *See* A.R.S. § 16-971(2)(a)(v). Of course, any speech that criticizes or praises an officeholder could potentially be characterized as advocating (at least implicitly) for or against the officeholder's recall. Such recalls could easily include one that has not yet been formally filed.

Further, Proposition 211 mandates disclosure of "other partisan campaign activity," and serves as the catch-all for "[a]n activity or public communication that supports the election or defeat of candidates of an identified political party or the electoral prospects of an identified political party." *Id.* § 16-971(2)(a)(vi). Given today's divided culture, regulators or private parties can leverage this trigger to target political rivals by deeming advocacy on particular issues as "partisan."

Finally, Proposition 211's reach extends to any preparatory activity that may end up supporting campaign media spending. *Id.* § 16-971(2)(a)(vii). But there is no statutory guidance as to the application of this trigger to national organizations that conduct multi-state issue advocacy campaigns that include Arizona. Given the broad definition of "campaign media spending," there is no limit to what is covered.

Private enforcement mechanism. Proposition 211 allows private parties to file complaints for alleged violations of the law. A.R.S. § 16-977(A). But where the

commission decides not to act, the law specially empowers private individuals to sue to compel enforcement by the commission. *Id.* § 16-977(C). In reviewing such complaints *de novo*, state courts can afford no deference to the commission's decision or its advisory opinions. *Id.*; *see also id.* § 12-910(F) (requiring Arizona courts to review agency action without legal deference). And where a potential penalty exceeds $50,000—a threshold easily surpassed given the available trebling of penalties, *see id.* § 16-976(A)—the commission may not even invoke its prosecutorial discretion, *id.* § 16-977(C).

Thus, Proposition 211 enables hundreds or thousands of enforcers to bring complaints based on legal theories broader than any embraced by the commission, thereby sowing chill. Even assuming a private complainant loses, the proceeding itself can be disruptive, costly, and chilling, especially when filed near an election. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 152-53, 164-66 (2014). Combined with the other burdens, the private-enforcement mechanism increases the degree to which Proposition 211 "hinders," "represses," "enervates," and even "extinguishes" speech. 4 Alexis de Tocqueville, *Democracy in Ameri*ca 140 (Eduardo Nolla ed., James T. Schleifer trans., Liberty Fund 2010) (1840).

C. Proposition 211 Is Not Narrowly Tailored.

Exacting scrutiny requires that a compelled-disclosure law be narrowly tailored. *See Bonta*, 594 U.S. at 608. Yet Proposition 211 is anything but narrow.

Its lack of any earmarking or intent requirement combines with other tailoring defects to seal its constitutional doom.

The primary tailoring problem with Proposition 211 is that it ensnares unwitting donors who may have no connection to Arizona and no knowledge of Proposition 211's requirements. Such donors will be caught in the law's dragnet and tied to downstream positions, organizations, and candidates, regardless of whether the "original donor" actually supports them or not. The upshot is a law that indiscriminately cues off of spurious links in donor chains. Still worse, the law operates to confuse and mislead voters contrary to its claimed purposes—burying in an undifferentiated donor listing whatever *subset* of donors may have given *directly* for the purpose of sponsoring a particular communication.

In the adjacent federal litigation, the responses of the law's defenders on this point have been illuminating. Some have raised the opt-out provision as though it is a complete recipe for narrow tailoring. *See also* VRTK Supp. Br. 6-7. But even if the opt-out were a salutary constitutional virtue rather than a burdensome constitutional vice (and it is the latter), it applies only to *direct* donors. *Cf.* A.R.S. § 16-972(C). It provides no aid to the upstream church or synagogue member who cannot choose where their donated funds get later rerouted. *See supra* pp.7-8.

Tellingly, the law's defenders have largely retreated to blaming the regulated entities, and *not the law*, for this defect in tailoring. According to Voters' Right to

Know, nothing in Proposition 211 prevents covered persons or intermediaries from allowing upstream donors to restrict how their funds are later spent, and nothing in Proposition 211 prevents upstream donors from instructing a recipient not to use their funds for a particular purpose.[5] Of course, such defender-doctored legal patches are proof positive of the basic tailoring problem.[6] Furthermore, the government cannot farm out its tailoring obligations, nor can the remedial actions of private individuals narrow a law's breadth. At best, Proposition 211 puts the constitutional rights of upstream donors at the mercy of a chain of private parties—with one weak link potentially compromising and chilling everyone. That is not narrow tailoring by the government.

Beyond the absence of an earmarking or other intent requirement, additional tailoring defects abound. Proposition 211 applies to organizations even when electioneering is not one of their major purposes, *see Buckley*, 424 U.S. at 79, and even when they engage in political advocacy only incidentally. It thus ensnares activity far removed from electioneering, especially given its low monetary

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[5] VRTK Answering Brief, *Ams. for Prosperity v. Meyer*, No. 24-2933 (9th Cir. Nov. 27, 2024), ECF 42 at 26-28; *see* City of Phoenix Amicus Brief, *Ams. for Prosperity v. Meyer*, No. 24-2933 (9th Cir. Dec. 4, 2024), ECF 48 at 14-15.

[6] The law's defenders have also pointed to guidance by the commission as proof of tailoring, but the commission's rules and advisory opinions depart from the law's text and only further evidence the lack of requisite tailoring. *See, e.g.*, A.A.C. R2-20-803(E) (requiring that covered persons honor opt-out requests even *after* the 21-day statutory period expires).

thresholds—an "original donor" is regulable upon giving $50 a week during a two-year disclosure period, with an "intermediary" regulable under half of that amount. *See* A.R.S. §§ 16-972(D), 16-973(A)(6)-(7). The law also applies to virtually *every* form of media, including "internet or another digital method, newspaper, magazine, outdoor advertising facility, mass mailing or another mass distribution, telephone bank or any other form of general public political advertising or marketing, regardless of medium." *Id.* § 16-971(17)(a).

Finally, Proposition 211 is underinclusive because it excludes unions and other membership organizations. *Id.* § 16-971(1)(b). This choice to regulate some activities while excluding others no less integral to the state's claimed interest "raises serious doubts about whether the [state] is in fact pursuing the interest it invokes." *IMDb.com Inc. v. Becerra*, 962 F.3d 1111, 1126 (9th Cir. 2020) (quotation omitted).

D. Proposition 211 Is An Outlier, And Its Whole Is More Chilling Than The Sum Of Its Parts.

Since Proposition 211 was passed in November 2022 and subsequently challenged in court, its defenders have framed it as a traditional disclosure law routinely upheld by other courts. That blinks reality. Indeed, the law's supporters have elsewhere admitted that Proposition 211 is "unique,"[7] "groundbreaking,"[8] and

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[7] VRTK Answering Brief, *supra* note 5, at 1, 13, 22.

[8] Elizabeth D. Shimek, *Supplemental Comments Regarding AOR 24-01 and Draft AO 24-03* at 5, Campaign Legal Center (Apr. 5, 2024), in *Packet for April*

"unprecedented."[9] Proposition 211's "comprehensive"[10] scheme vastly exceeds anything the U.S. Supreme Court has endorsed.

To justify this overreach, Proposition 211's supporters break the law down into its individual parts and then compare each alone relative to other laws. The court of appeals followed a similar approach below. *See* Op. ¶30. That, however, marks the wrong analytical approach. As the U.S. Supreme Court has repeatedly taught, constitutional scrutiny requires examining a law's provisions together, not separately. *See, e.g.*, *Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 501 (2010) (evaluating a statute's constitutionality by considering the combination of multiple parts that were independently constitutional); *Seila Law LLC v. CFPB*, 591 U.S. 197, 218-19 (2020); *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 498-99 (1982). Here, although Proposition 211 contains many particular flaws, *see supra* Sections A-C, the full breadth of its unconstitutionality is evident from its interplay and combined effects.

For example, Proposition 211's overbroad triggers for "campaign media spending" reach pure issue advocacy, even by organizations whose major purpose is

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18, 2024 Meeting at 206, Citizens Clean Elections Commission, https://tinyurl.com/s7ahdnjd3 (last accessed June 23, 2025).

[9] Katya Schwenk, *Dark Money's Plan To Sabotage A Key Transparency Law*, Jacobin (Oct. 30, 2024), https://tinyurl.com/3ksangd58.

[10] Madeleine Greenberg, *A Healthy Democracy Requires Transparency*, Campaign Legal Center (Mar. 19, 2025), https://tinyurl.com/00fjd76d.

not electioneering. *See supra* pp.12-14, 17. Proposition 211 also requires an endless, nationwide look through across entire charitable chains for otherwise anonymous and unwitting donors. *See supra* pp.5-6. That is, the law not only regulates protected speech vastly removed from Arizona elections, but it also burdens those individuals whose upstream giving somehow connects, however incidentally and unexpectedly. In so doing, Proposition 211 pursues interests that are foreign to First Amendment law while casting enormous burdens and chills that far surpass those of any disclosure regime ever upheld by the U.S. Supreme Court or any other court.

Once Proposition 211 is analyzed as a whole, rather than in artificial isolation, its constitutional defects become all the more apparent. This Court should analyze the law's provisions holistically, particularly as Proposition 211's proponents seek to export the "comprehensive" Arizona "model" to other states. *See Arizona's Proposition 211 And The Fight For The Voters' Right To Know*, Campaign Legal Center (Aug. 22, 2023) (describing Proposition 211 as part of "just the first wave in a movement at the state level"); *id.* (listing bills in Hawaii, Illinois, and Maine).[11]

CONCLUSION

The Court should reverse.

[11] https://tinyurl.com/65dsnj012.

DATED this 24th day of June 2025.

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CERTIFICATE OF COMPLIANCE

I, Dominic E. Draye, do hereby certify that the foregoing Brief of Amici Curiae Americans for Prosperity Foundation and Americans for Prosperity in Support of Appellants is in compliance with Rule 14(a), Arizona Rules of Civil Appellate Procedure, in that it is double spaced except in footnotes and quotations, is prepared in 14-point proportionally spaced type Times New Roman and, excluding the parts excepted by ARCAP 4(b)(9), contains 20 pages and 4,547 words.

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CERTIFICATE OF SERVICE

I, Dylan Stanek, hereby certify that on the 24th day of June, 2025, I caused the original of this Brief of Amici Curiae Americans for Prosperity and Americans for Prosperity Foundation in Support of Appellants to be electronically filed with the Clerk of the Arizona Supreme Court via AZTurboCourt.com:

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